TITLE 326 AIR POLLUTION CONTROL BOARD
#02-198(APCB)

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from November 1, 2002, through December 2, 2002, on IDEM's draft rule language. IDEM received comments from the following parties:

Cabinet for Health Services, Commonwealth of Kentucky (KY)
City of Bloomington, Bruce Jennings (COB)
Community Housing Development Organization (CHD)
Elkhart Housing Partnership, Inc. (EHP)
Environmental Management Institute (EMI)
Greentree Environmental Svc., Inc (GES)
Housing Opportunities Inc. (HOI)
Improving Kids' Environment (IKE)
Ohio Valley Opportunities, Inc. (OVO)

Following is a summary of the comments received and IDEM's responses thereto.

Reciprocity

Comment: Individuals in states near Indiana find it difficult to operate in Indiana without a reciprocity agreement for licensing. If Indiana would accept training from all course providers that were either an EPA-approved course or approved by states authorized by the U.S. EPA to approve course providers, the cost and difficulty of reciprocity would be reduced enormously. To ensure that persons know the special Indiana requirements, they could be required to take an Indiana rules course taught by any course provider with Indiana approval for the supervisor initial or risk assessor initial courses. (IKE)

Comment: One of the more prevalent issues between the lead-based paint programs in Indiana and Kentucky is dealing with the acceptance of certified companies and individuals that have received their certification from Kentucky. Although the training is provided by one of the common credited trainers, those trained in Kentucky must re-take courses and the third-party test in order to work in Indiana. It would seem this is redundant and a hindrance for certain lead compliance situations. Kentucky would like to have a reciprocity agreement with the state of Indiana to better address lead hazard issues on a regional scale. (KY)

Comment: As stipulated by U.S. Department of Housing and Urban Development (HUD), projects that exceed twenty-five thousand dollars ($25,000) in rehabilitation hard costs are required to

be performed by licensed abatement workers or contractors. The reciprocity provisions under the training course provider rule has limited potential. A direct reciprocity provision for license holders from states contiguous to Indiana would transform potential into reality. (OVO)(EHP)(CHD)(HOI)

Comment: New language for reciprocal licensing should include that the training course provider is U.S. EPA approved, the applicant has a valid training certificate certified by the training course provider, an Indiana rules class is completed, and an application is submitted with a twenty-five dollar ($25) fee. (EMI)

Response: The department has added a provision for reciprocity at 326 IAC 23-2-6.5. A person who holds a current U.S. EPA or U.S. EPA state or tribe authorized lead-based paint program license may submit a completed application on forms provided by the department, a copy of the current license, proof of having attended the two (2) hour Indiana lead-based paint awareness course, and additional documentation indicating that the applicant or the applicant's designated representative meets the experience, education, and training requirements including proof of taking and passing all initial and required refresher courses. These requirements will make it easier for licensees from other states to obtain an Indiana license, while ensuring that they are aware of Indiana's particular rules. In addition to license reciprocity, a person who receives training in another state may use that training to fulfill the training requirement for an initial Indiana license under 326 IAC 23-2-4.

Comment: Under 326 IAC 23-3-3, Initial Training Course Requirements, new language is suggested as minimum requirements for training course reciprocity. (EMI)

Response: Under 326 IAC 23-2-4, language has been added to allow a person who has received training from a U.S. EPA approved or U.S. EPA state or tribal authorized lead-based paint course in another state to use that training to fulfill the training requirement for an initial Indiana license.

Comment: Why charge additional fees per license for reciprocity, if an Indiana refresher course would be required. It seems at every opportunity fees are being levied to these contractors. (COB)

Response: The fee charged for processing an application for each discipline reflects a portion of the administrative costs incurred by the department to perform the required background check that is performed on each application.

Comment: Kentucky requires a refresher course to be taken within two (2) years of licensing while Indiana utilizes a three (3) year period. Differences between the programs must be worked out before reciprocity can be accomplished between the states. (KY)

Response: The department understands Kentucky's concern. However, the three (3) year period between refresher courses is stipulated by Indiana statute and cannot be amended by this administrative rule process.

Definitions

Comment: Please define the term "access" to project supervisors. Will supervisors be required to be physically present on site during work, or does access include by cell phone? (COB)

Response: "Access to project supervisors" means that project supervisors must be physically present on-site to be accessible to workers.

Comment: During the first comment period, we requested the definition of "lead-based paint activities" at 326 IAC 23-1-36 be amended by adding clearance examination to the list of activities. IDEM stated it prefers to not vary from the federal rules, but IDEM is now regulating clearance examiners who conduct clearance examinations after nonabatement activities. HEA 1171 requires that the state rules vary from the federal rules in this regard. (IKE)

Response: The department has followed the requirements of HEA 1171 by adding "clearance examiner" as a licensed discipline at 326 IAC 326 IAC 23-2-3 and by adding work practice standards for nonabatement activities at 326 IAC 23-5. However, adding clearance examination to the definition of "lead-based paint activities" would be an expansion of the lead-based paint regulatory program that is beyond the scope of this rulemaking.

Comment: A definition of "clearance examination" is needed. (IKE)

Response: The department agrees and a definition of clearance examination has been added to the draft rule at 326 IAC 23-1-7.5.

Comment: Emergency repairs should remain a part of this rule and defined to include "activities performed in an effort to reduce or eliminate lead exposure to a child when identified as lead poisoned in any facility or housing unit by a licensed risk assessor as an exposure contributing pathway during elevated blood lead (EBL) investigation." Clearance testing should be required before occupancy. (GES)

Response: U.S. EPA does not address emergency repairs in the lead-based paint rules. Emergency situations are not recognized in the lead paint license program except for elevated blood lead levels, which are addressed by the health department. Therefore the language is not appropriate in this rule.

Comment: A definition of "renovation" is needed. The term is used four times in section 37. EPA's definition at 40 CFR 745.83 should be used. (IKE)

Response: The department agrees and has added the federal definition in the draft rule at 326 IAC 23-1-58.5.

Comment: In the record keeping section of the rule, 326 IAC 23-4-13, the word "days" should be defined either "calendar" or "working". (COB)

Response: The department has added the term "calendar" to the term "days" in 326 IAC 23-4-13 for record keeping.

Comment: The definition of "common area group", 326 IAC 23-1-9, is not used anywhere else in the rule. The term "common area" is essential to the rule. The common area group definition should not have been created by deleting a regulation-specific term. Please restore the definition to its original form. (EMI)

Response: U.S. EPA changed the term "common area" in the January 5, 2001, Federal Register (66 FR 1205) to "common area group". The department has proposed to change the term to common area group within the entire rule to reflect this new amendment. The new term's definition is more inclusive and must be added to the rules to assure minimum federal requirements are met.

Comment: The definition of "containment" at 326 IAC 23-1-12 is not needed. Other parts of this rule make it illegal to conduct lead-based paint abatement without processes in place to control exposures to the lead-contaminated dust and debris created during abatement. The commentator suggests rule language to include the use of barriers and work practices to reduce dust and debris from the work area. (EMI)

Response: There are two (2) distinctions between the U.S. EPA and HUD definition of containment. The HUD rule applies narrowly to only federally owned and assisted housing and only applies to preventing dust and debris from leaving the worksite. The U.S. EPA rule applies more broadly to all target housing and child-occupied facilities and is meant to protect workers and the environment. The U.S. EPA standard is more generally defined and, therefore, more protective. For these reasons, the department must include the U.S. EPA definition of containment to ensure Indiana rules meet the same level of stringency.

Comment: In the definition of "deteriorated paint" at 326 IAC 23-1-17, we suggest use of the U.S. EPA's definition from 40 CFR 745.63. (EMI)

Response: The department agrees and will change the definition.

Comment: Please cite the relevant U.S. EPA standards for the following definitions "dust-lead hazard" (326 IAC 23-1-21.5), "paint-lead hazard" (326 IAC 23-1-52.5), and "soil-lead hazard" (326 IAC 23-1-60.6) and revise them to include the reference. (EMI)

Response: The department agrees and has added the U.S. EPA standards to each section of the rule.

Comment: Under 326 IAC 23-1-22 and 326 IAC 23-2-1(b)(2)(B)(ii), change the term "elevated blood lead level" to "environmental intervention blood lead level". The national definition of "elevated blood lead level" is a confirmed concentration above ten (10) micrograms per deciliter. Indiana should not try to redefine this term. (EMI)

Response: The department agrees and has changed the term to "environmental intervention blood lead level" in both rule sections.

Comment: A definition of "elevated blood lead level" is needed for the term in 326 IAC 23-5-1(b)(2)(C) and should refer to the state department of health's definition. (IKE)

Response: In order to clarify the rules, the department has revised the term from "elevated blood lead level" to "environmental intervention blood lead level" at 326 IAC 23-1-22 and has used the national definition.

Comment: It is not usual to remove lead from a project. Removal of metallic lead would be less dangerous than improper removal of lead-based paint. Delete and replace the definition of "lead-contaminated waste" in 326 IAC 23-1-40 and 326 IAC 23-4-5 with the suggested language for "lead abated waste". (EMI)

Comment: There is no reason to use the term at 326 IAC 23-1-40, "lead-contaminated waste" since Indiana does not regulate lead-based paint wastes from residential work. The term "lead-abated waste" is more useful for describing project wastes. (EMI)

Response: The department agrees and will propose to delete the term "lead-contaminated waste" under 326 IAC 23-1-40 and add a new definition of "lead abated waste" at 326 IAC 23-1-33.5. The term will also be changed in other sections of the rule.

Comment: The definition of "mid-yard" at 326 IAC 1-2-48.6 should be deleted since it is not used anywhere else in the rule. (EMI)

Response: The definition will be deleted from the draft rule.

Comment: We assume that "paint in poor condition" as defined at 326 IAC 23-1-52 means to follow the federal de minimis amounts which are twenty (20) square feet on an exterior component. We would ask that this definition be changed to twenty (20) square feet on exterior components. (GES)

Response: The department agrees and will add "twenty (20) square feet" to the definition in 326 IAC 23-1-52.

Comment: The U.S. EPA definition of "paint-lead hazard" at 40 CFR 745.65 should be used in the definition of "paint-lead hazard" at 326 IAC 23-1-52.5. (EMI)

Response: The federal language was changed from "lead paint hazard" to "paint lead hazard" in

the January 5, 2001, Federal Register (66 FR 1205). The term will be amended to "paint lead hazard" consistent with 40 CFR 745.

Comment: The definition of "play area" at 326 IAC 23-1-54.5 should include the term "or younger" after "six (6) years of age". All other IDEM and U.S. EPA definitions include six (6) year olds. (EMI)

Response: The department agrees and will add the language to 326 IAC 23-1-54.5.

Comment: A set of parentheses are missing from the equation in the definition of "weighted arithmetic mean" at 326 IAC 23-1-69.5. (EMI)

Response: The department has corrected the equation.

Risk Assessors/Risk Assessment

Comment: Add to 326 IAC 23-4-2 that upon delivery of the risk assessment report to the stated individuals, the risk assessor should also forward a copy to the county assessors office for inclusion in the property records in an effort to reduce reoccupancy levels and alleviate the possibility of additional children being poisoned from the same property. (GES)

Response: The Air Pollution Control Board does not have statutory authority to direct county assessors to include the report in the property records and establishing this process is beyond the scope of this rulemaking.

Comment: In 326 IAC 23-4-4(4) (risk assessment), there is confusion on what constitutes one (1) or more children coming in contact with dust. Does this include the time requirement of six (6) hours per week contained in the definition of child-occupied facility at 326 IAC 23-1-7? (GES)

Response: Yes, if contact is more than six (6) hours per week, per one (1) or more children six (6) years of age or younger, it is defined as a child-occupied facility.

Federal requirements

Comment: In 326 IAC 23-3-6(f), U.S. EPA allows worker and supervisor training to be taught together. For consistency, Indiana should follow U.S. EPA's approach and make it easier to attract workers. It is inappropriate for IDEM to resist improving the rule because the language was in the original approved program. (IKE)

Response: U.S. EPA provides for combined worker and supervisor training through policy rather than by rule. The department will address combined worker and supervisor training in policy.

Comment: Section 37(b) of the rule (326 IAC 23-1-37) is designed to incorporate the essential provisions of 40 CFR 745.83 into the rules. However, there are significant changes to the

federal requirements that make the requirements ineffective. U.S. EPA requires the pamphlet be provided to the owner and occupant and requires written acknowledgment of receipt of the pamphlet from the owner of the target housing. Indiana provides an exemption for lead abatement work performed by people on their own property. U.S. EPA is silent on this issue. U.S. EPA allows a contractor to avoid providing the notice where there is a licensed inspector who confirms that the paint is not lead based. Indiana provides no exemption. Indiana should incorporate the federal requirements by reference. They should not make modification to the carefully crafted federal requirements. (IKE)

Response: The department will add the requirements under 40 CFR 745.85 to the rule at 326 IAC 23-1-52.5 concerning notification of receipt of the pamphlet. The exemption for lead abatement work performed by people on their own property is from the Indiana statute and is not a requirement from U.S. EPA. The exemption to notification that U.S. EPA provides under 40 CFR 745.82(b)(3) is for renovation activities which are not included in this rule.

Comment: Under 326 IAC 23-4-5, Indiana's exclusion on work standards being required on properties constructed after 1960 is not consistent with federal guidelines which require safe work practices to be performed on all properties constructed prior to January 1, 1978. This will confuse contractors and work to circumvent the federal statute and does not meet the same as or more stringent than state requirements for rule development. (GES)

Response: The language regarding properties constructed after 1960 is a statutory requirement, IC 13-14-17, regarding nonabatement activities. The department must address statutory requirements.

Comment: In previous comments, it was suggested that IDEM follow U.S. EPA's policy and allow an equivalent lead hazard information pamphlet be distributed other than U.S. EPA's. IDEM is being inconsistent by not following U.S. EPA's policy. (IKE)

Response: At a minimum, the department requires the U.S. EPA pamphlet to be distributed to assure consistency of information to all affected parties, however, additional information may be added to the handout materials. By requiring the distribution of U.S. EPA's pamphlet, U.S. EPA's up-to-date rules and policies are available to all affected parties.

Comment: We request adoption in the statute of the contractor disclosure requirements in the federal U.S. EPA "Lead Pre-Renovation Rule". (GES)

Response: Adoption of such requirements by state rule would be a significant expansion of the lead-based paint program to include renovation, remodeling, and precursors to those programs and is beyond the scope of HEA 1171 and our current statutory authority.

Sampling/Work Practice

Comment: In 326 IAC 23-4-4(7)(B), there is no U.S. EPA or IDEM lead-paint hazard

standard for dripline soil. Why should a sample be collected if it cannot be interpreted? Delete subdivision (B) and add "the rest of the yard where bare soil is present including nonplay areas". (EMI)

Response: The department has added the suggested language as subdivision (C) and maintained subdivision (B). Dripline soil is governed by the soil lead hazard standard, in the amended federal rule under TSCA Section 403, of four hundred (400) parts per million.

Comment: In 326 IAC 23-4-9(6)(A), clearance exam protocols, there is a requirement that a minimum of eight (8) surface samples (wipes) to be taken. We would ask that a minimum wipe requirement be established or "come in contact with" be defined. This will go far in establishing a consistent sampling protocol for all state licensed risk assessors as well as course instructors when training potential licensees. (GES)

Comment: In 326 IAC 23-1-60(2), under the definition of risk assessment, taking wipes of any kind is the responsibility of a licensed risk assessor. By definition, sampling is an on-site investigation to determine the existence of lead-based paint in what ever location and or amounts found. (GES)

Response: The number of wipes is pre-determined by the number of rooms being sampled at 326 IAC 23-4-3 and 326 IAC 23-4-4. Since the number of rooms and the size of the facility being inspected can vary in size and number from one (1) location to another, we are unable to provide a de minimis number of wipes to be listed in the rule.

Licensing

Comment: No state takes longer to issue licenses than Indiana. Since the state has no need to consult anything other than the submitted paperwork and its own records in order to issue a refresher certificate, there seems to be little reason to take more than a single hour for such renewals. The rule needs to set time limits after the date of receipt of the application for informing the applicant of any deficiencies and then set further limits for issuing the license after all materials are received. The commentator submits suggested language and time frames for reviewing license applications. (EMI)

Response: The department processes lead-based paint licenses as expeditiously as possible while meeting our responsibility to ensure that licenses are appropriate for each application. The lead-based paint license process includes a variety of steps to be able to issue a license. These steps include applicants taking the third-party exam, submittal of the application and appropriate fees, review of the application for completeness, and verification of training and actual issuance and mailing of the license. In addition to the steps listed above, training course providers have up to two (2) weeks to submit their class rosters to the department to verify training. Lead-based paint license applications are prioritized on a first come, first served basis along with asbestos license applications. A one (1) hour turn-around time cannot be achieved with all the steps listed above. IDEM will continue to strive to issue licenses as expeditiously as possible and implement efficiencies wherever possible.

Comment: In 326 IAC 23-3-3(4), initial training course requirements, delete clause (I) which lists the personal protective equipment to be worn by a project designer. This was covered in the required supervisor course. There is not enough time to repeat this information and it is not required by U.S. EPA. (EMI)

Response: The department agrees and will strike the language from the draft rule in 326 IAC 23-3-3(4)(I).

Fraud

Comment: The commentator submits suggested language for the inclusion and exclusion of activities related to a lead hazard screen. (EMI)

Comment: While HUD only requires lead inspectors and risk assessors to be certified, the spirit of the provision is that these individuals should be licensed and regulated by the state. As the Indiana rule is currently written, there is too much ambiguity in the definitions of what constitutes a lead inspection and a risk assessment. Consequently, individuals and firms may skirt the licensing requirement and propagate fraud by marketing equivalent services by another name. Any individual or firm that takes a lead sample or provides recommendations on mitigating lead hazards on a contractual basis should be licensed. (OVO)(EHP)(CHD)(HOI)

Comment: We are concerned that unlicensed individuals may be advertising their services as a risk assessment but then claim to be conducting only a risk investigation or risk examination or some other task that does not require a license. The definition of risk assessment needs to be modified to include situations where an individual advertises his or her services as a risk assessment. Similar changes are needed to the definition of lead-hazard screen, abatement, and inspection. (IKE)

Comment: Because Indiana narrowly interprets the rules to be applicable only to abatement activities, almost any project can be defined out of the regulated category. People are purporting to perform lead-based paint hazard services who do not have the necessary training and experience to perform the work well. The problem is especially severe with regard to risk assessments and inspections. Lead-based paint risk assessment and lead-based paint inspection need to be regulatory terms so consumers can compare vendor quotes accurately. The state needs to include U.S. EPA's language in 40 CFR 745.220 and 40 CFR 745.223. (EMI)

Comment: Modify the definition of "risk assessment" to make it clear that the collecting of samples does not constitute a risk assessment. IDEM agreed with this conclusion in its response to comments, but decided further clarification was not needed in the rule. (IKE)

Response: The rules at 326 IAC 23-4-2 and 326 IAC 23-4-4 require that both an "inspection" and a "risk assessment" include a detailed set of tasks to be performed. The department has further defined "inspection" by including at 326 IAC 23-1-62.5 that a "surface-by-surface investigation," as used in the definition of "inspection" at 326 IAC 23-1-33, means an investigation of

the entire target housing or child-occupied facility. If a company claims that it is providing an inspection or a risk assessment, and such services do not meet the definitions or include all of the tasks set forth in 326 IAC 23-4-2 and 326 IAC 23-4-4, that company would be in violation of the rules and may be subject to either civil or criminal enforcement. If a company provides services that are something less than an inspection or risk assessment, and calls it something other than an inspection or risk assessment, the department does not regulate such activity.

Comment: 326 IAC 23-2-3(c)(1) essentially restates the requirements to become a licensed lead supervisor. It would be clearer to amend the rule to state that an abatement contractor must have a licensed lead supervisor as an agent or employer. (IKE)

Response: The department disagrees. The supervisor and contractor licenses have different requirements and, therefore, are listed in separate sections of the rule to clarify those differences.

Comment: The dual use of the term "contractor" as both a specific type of license and a business structure is confusing. Change the word "contractor" or "lead-based paint activities contractor" to "abatement contracting firm" in all instances in the rule. (EMI)

Comment: Change the word contractor to firm in all instances in the rule. (EMI)

Comment: The current rules define a licensed contractor as any person conducting lead-based paint activities which include risk assessment and inspections. However, the licensing requirements for a licensed contractor contemplate only abatement work and not risk assessment or inspections. The licensing requirement clearly does not require that any person doing a risk assessment become a licensed contractor. The term licensed contractor should be limited to abatement activities or use the term "firm" in place of contractor. (IKE)

Response: The department wants to distinguish between the term "contractor" and U.S. EPA's term "firm". The definition of "contractor," specific to this program, will be amended to be clearer.

Comment: 326 IAC 23-2-3(c) requires all risk assessors who do work for compensation to be licensed contractors and licensed supervisors. IDEM's practice is to only require a contractor's license for those who intend to perform abatement work. We agree with IDEM's practice and suggest the rules be revised to reflect that practice. (IKE)

Comment: Under the definition of "Risk assessment" at 326 IAC 23-1-60, add language to specify that a risk assessment includes projects other than lead hazard screens as defined in 326 IAC 23-1-41, for which there is a written contract or other document which provides that an individual or firm will be conducting activities in or to a regulated facility that shall result in the determination of the presence of lead-based paint hazards in the facility. Risk assessment does not include activities for which the person performing the activities receives no compensation by any person who has a current or future financial interest in the property, or is performed by a representative of the owner or occupant

or by a prospective buyer of the facility, if the person performing the activity provides a disclaimer in all advertising that results reported do not constitute a complete lead inspection, risk assessment, or lead hazard screen. (EMI)

Response: The definition of risk assessment, risk assessor, inspection, and inspector meet U.S. EPA definitions. We have further clarified definitions of inspector by defining "surface-by-surface investigations" to make it clear that it includes the entire facility. Inspection, lead hazard screen, and risk assessments are defined in 326 IAC 23-4-2 and 326 IAC 23-4-4 by including specific steps that must be part of the activities and the report. Anyone who purports to perform inspections, lead hazard screens, or risk assessments and who does not follow these rules may be subject to enforcement.

Comment: A licensed supervisor, inspector, risk assessor, or clearance examiner should be permitted to take the refresher training anytime after receiving the license. The person should not be required to take the refresher training any less than thirty-six (36) months before applying for a license renewal. If the person feels that he or she would benefit from the refresher training immediately after getting a license, the person should be allowed to do so without having to take the course again later. 326 IAC 23-2-5(a)(2) should say previous thirty-six (36) months, not previous twelve (12) months or twenty-four (24) months. (IKE)

Response: Because the license term is being extended to three (3) years from one (1) year, the department believes that refresher training should be taken within twelve (12) months of license renewal. Otherwise, a person could go almost six (6) years without a refresher course. For example, a refresher course could be taken in the first year of the license term and not until the third year of the next license term, with a gap of nearly six (6) years. The department has an interest to ensure that refresher courses are taken in closer proximity to license renewal. Nothing in the rule prevents a person from taking a refresher course sooner, if the person believes he or she would benefit from it.

Comment: In 326 IAC 23-2-5(a)(2), the word "course" in the phrase "take appropriate training course" should be singular, not plural, for particular discipline. The individual would not need both inspector and risk assessor refreshers and would not be reciprocal with other states with this language. (EMI)

Response: This language is not being included in the rule, but we are proposing a license reciprocity program under 326 IAC 23-2-6.5.

Comment: In 326 IAC 23-2-4(b)(2), if a supervisor has a license, they have submitted the information required by 326 IAC 23-2-3(d). By submitting name and proof of license, this has been submitted. (EMI)

Response: Because there are two (2) separate application packages, it is necessary to require the information be resubmitted for efficiency in the processing of applications.

Comment: Under licensing qualifications, define two (2) years of work in the construction trade. Are you going to allow someone who has worked at Lowe's as a sales representative to count that as construction time and experience, or are you going to be more specific on construction work experience? (COB)

Response: The department will review the application for work experience in construction. Work as a sales representative would not qualify as construction work.

Comment: In 326 IAC 23-2-7, lead license revocation and denial, IDEM should define terms and penalty periods for a lead contractor found in violation of regulations. IDEM should maintain a listing of such violators that is accessible to the public. Also, define procedures for renewal application for reinstatement of revoked contractors licenses. (COB)

Response: Revocations are in the current rule at 326 IAC 23-2-7 and are determined on a case-by-case basis. Any contractor whose license has been revoked would refer to the applicable reapplication procedures in 326 IAC 23-2-4. Penalty periods for violations are addressed by the Office of Enforcement, pursuant to the statutory authority in IC 13-30-4 and IC 13-30-5. Notices of violations and agreed orders are on IDEM's web site at www.state.in.us/idem/enforcement/.

Comment: Under 326 IAC 23-2-5(b), for license renewal, how will any new information be forwarded to qualified contractors? Will it be the responsibility of the contractor to collect the information or will IDEM forward it to license contractors. Who will monitor updated manuals? Will copies need to be turned in with renewal applications? Samples of the most current risk assessments should be included for review by IDEM in the renewal application for risk assessor. (COB)

Response: Contractors are required to stay abreast of current information. The department will review the updated manuals at the time of submittal for renewal. It is the department's policy to provide compliance assistance to the regulated community when new rules and guidance are issued.

Work Practice Standards

Comment: IDEM indicated in the second notice that 326 IAC 23-5 would provide procedures for nonabatement clearance procedures. We could not identify these in the draft rule. (IKE)

Response: The department responded at second notice that the statutory language would be included in the rule to provide easy access to the work practice standards for nonabatement activities. That language has been added under 326 IAC 23-5-1 and 326 IAC 23-5-2. Licensed clearance examiners will follow U. S. Department of Housing and Urban Development (HUD) regulations for procedures on nonabatement activities.

Comment: In 326 IAC 23-4-6 delete linear feet. Lead-based paint on pipes is not a normal

course of lead-based paint abatement. Pipes are not a component. We are working with construction issues. (EMI)

Response: Pipes can contain lead-based paint and it would be measured in linear feet to notify the department of the scope of the abatement project. The department will add pipes to the list of components in the definition of "component or building component" defined at 326 IAC 23-1-11.

Testing

Comment: Previous comments requested that a third party examination not contain questions that do not reflect current state and federal guidelines or are not applicable to the operation of all models of xray fluorescent scopes. IDEM's preference to use U.S. EPA's third-party exam is contrary to the purpose of the rule. (IKE)

Response: U.S. EPA has invested significant resources into development of these examinations and encourages states to use them. We believe these exams are sufficient to ensure the applicant has been appropriately trained. We will continue to review the examinations and provide comments to U.S. EPA and verify the content of the examinations is sufficient to determine if the applicant is adequately trained.

Comment: Under 326 IAC 23-4-5, abatement procedures for all projects, change the number of questions for risk assessors and project designers to fifty (50) questions. (IKE)

Comment: In 326 IAC 23-3-5, examination requirements, the risk assessor exam should be fifty (50) questions. (EMI)

Response: The department believes that one hundred (100) questions provides a more thorough examination to assure that applicants have been trained on a wide variety of topics.

Contractors

Comment: The department should require any other agency or local government office receiving state or federal funding to assist in documentation and monitoring requirements for any lead contractors utilized in a lead project funded with state of federal monies. (COB)

Response: Neither the department nor the Air Pollution Control Board has statutory authority over other agencies or local governments for these purposes.

Comment: Under lead abatement notification procedures, 326 IAC 23-4-6(a), add the term "or agent" to the sentence "Each owner or operator". As the City of Bloomington we provide notices as would any agency receiving state or federal funding for lead project. (COB)

Response: IDEM believes the term "agent" is implicit in the term "owner or operator" because an agent is part of a contractual relationship with the owner or operator. An agent, in this case, would be contractually obligated to follow the rule as it applies to owners or operators. Therefore, it is not

necessary to change the language to include "agent".

Comment: Change the wording under 326 IAC 23-2-4(b)(6) from "lead-based paint contractual penalties" to "contractual penalties related to lead-based paint activities". (IKE)

Response: The department agrees and will recommend the change.

Comment: The requirements for abatement contracting firms are unduly restrictive since the law generally allows minor, older problems to be ignored when no repeat pattern is present. Actual violation of the law should be reported indefinitely, but there is no reason to include customer disputes after a few years have passed. Limit the description of lead-based project to the previous thirty-six (36) months and specify that ongoing current projects need not be included. (EMI)

Response: The department believes that prospective clients should be able to review the work history of a contractor with whom they may contract. Additionally, the department needs to perform a complete and accurate review and also must have access to the work history. For these reasons, the requested changes have not been made.

Fees

Comment: Fees charged by the state for its services should primarily reflect the effort needed to conduct the service and may secondarily reflect the value of the service to the user and the user's ability to pay. The fee schedule is higher than for asbestos on a per-license basis, but the lead license fees are cheaper on a per-year basis since they are three (3) year rather than one-year licenses. The fee should not set the bar so high that persons are discouraged from entering the discipline, since building capacity should be part of the rule's role. Under 326 IAC 23-2-8, delete "nonrefundable", change worker and clearance examiner fees to seventy-five dollars ($75) and contractor to three hundred dollars ($300). (EMI)

Response: Although the department is proposing to increase fees to the statutory limit of one hundred fifty dollars ($150), this fee will cover a three year rather than a one year application period. This change in license fee amount and duration will result in a cost savings to most licensees ranging from one hundred fifty dollars ($150) to three hundred dollars ($300), depending on the discipline. We have evaluated the fees in light of program costs and the impact of a three (3) year licensing cycle. The schedule proposed in the rule provides a cost savings to most licensees while ensuring sufficient resources for the state to maintain a high level licensing oversight, compliance, and other activities.

Comment: We are concerned about the noncompetitive aspects of high fees for courses for which few students enroll. If we had to pay one thousand dollars ($1,000) for each course as required by 326 IAC 23-3-12, application fee, we would discontinue offering worker courses entirely and we would be unlikely to offer the clearance examiner and Indiana Rules courses since the price impact for

each enrollment would be significant and further reduce the number of students trained. There should be no fees for either of these two (2) courses. Instead they should be automatically allowed for any approved course providers with the proper qualifications. Since this requires no additional work on the part of the agency, the assessment of fees does not seem justified. (EMI)

Response: Each course offered requires review by department staff of the initial curriculum as well as other oversight activities, such as field audits. The fees included in the draft rule are necessary to support this work.